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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,698	12/17/2003	Lan Chen	246696US90	5689

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EXAMINER
VIANA DI PRISCO, GERMAN

ART UNIT	PAPER NUMBER
2617	

NOTIFICATION DATE	DELIVERY MODE
09/16/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action *Before the Filing of an Appeal Brief*	Application No. *10/736,698*	Applicant(s) CHEN ET AL.	
	Examiner GERMAN VIANA DI PRISCO	Art Unit 2617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>03 August 2009</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

    a) ☒ The period for reply expires <u>4</u> months from the mailing date of the final rejection.

    b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

    (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);

    (b) ☐ They raise the issue of new matter (see NOTE below);

    (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

    (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

      NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

    The status of the claim(s) is (or will be) as follows:

    Claim(s) allowed: _____.

    Claim(s) objected to: _____.

    Claim(s) rejected: _____.

    Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>See Continuation Sheet.</u>

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____.

/Rafael Pérez-Gutiérrez/
Supervisory Patent Examiner, Art Unit 2617

/Germán Viana Di Prisco/
Examiner, Art Unit 2617

Continuation of 11. does NOT place the application in condition for allowance because:

The Examiner has carefully considered Applicant's Request for Consideration filed on 08/03/2009 but respectfully disagrees with Applicant's interpretation of the Alastalo reference as explained below.

In page 3 of the Remarks, the Applicant correctly states that Alastalo describes a method for dealing with multiple packets in a single time slot, and that Alastalo describes that each of the packets must have the same length to properly detect acknowledgments of each packet, but then concludes that since padding is only needed in the last packet to match this packet's length to the earlier packets, such a scheme clearly always selects a transmission block size smaller that the amount of data buffered, and that otherwise multiple packets would not exist. To reach the aforementioned conclusion the Examiner believes that the Applicant is relying on column 3, lines 44-48 of Alastalo, where it is disclosed that the data to be communicated is divided into data fragments.

However this corresponds to an embodiment that is different from the embodiment relied upon by the Examiner. In rejecting claim 1 the Examiner has relied upon a different embodiment taught by Alastalo. In column 3, lines 1-43. Alastalo clearly explains that a determination is made of the relative lengths of the data packets to be communicated, and that data which is of a lesser length is padded so that all the packets have the same length. Alastalo further explains in column 3, lines 38-43 that modulation is used to tune the packet length in order to reduce the amount of padding. As best understood by the Examiner Alastalo determines the packet size to be equal to the longest data to be transmitted and changes the modulation in order to try to fit data (i.e. data shorter than the longest data) to the longest packet size trying to minimize the amount of required padding. According to the Examiner this reads on "selecting a modulation scheme from the list using a smallest available transmission block size that is greater than or equal to the amount of data buffered" as recited in claim 1 and therefore the final rejection is maintained by the Examiner.